

## BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Chops Holdings, LLC,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee,

Case No: 12R 1260 & 13R 464

Decision and Order Affirming the  
Determination of the Douglas County Board  
of Equalization

**For the Appellant:**

David Paladino,  
Member, Chops Holdings, LLC.

**For the Appellee:**

Jimmie Pinkham III,  
Deputy Douglas County Attorney.

These appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

### I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel improved with 1,320 square foot single family rental home located at 1729 South 28th Street, Omaha, Douglas County, Nebraska. The legal description of the parcel and property record cards for the Subject Property are found at Exhibits 243 and 244.

### II. PROCEDURAL HISTORY

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$46,200 for both tax years 2012 and 2013.<sup>1</sup> Chops Holdings, LLC, (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed value for tax year 2012 of \$24,000,<sup>2</sup> and requested an assessed value of \$40,200 for tax year 2013.<sup>3</sup> The County Board determined that the taxable value for both tax years 2012 and 2013 was \$46,200.<sup>4</sup>

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<sup>1</sup> See, E83 and E84.

<sup>2</sup> See, E243:34.

<sup>3</sup> See, E244:35.

<sup>4</sup> See, E83 and E84.

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on November 19, 2014.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>5</sup> When the Commission considers an appeal of a decision of a County Board of Equalization, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."<sup>6</sup>

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.<sup>7</sup>

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>8</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>9</sup>

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>10</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>11</sup>

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<sup>5</sup> See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>6</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>7</sup> *Id.*

<sup>8</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>9</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>10</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>11</sup> *Bottomf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”<sup>12</sup> The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”<sup>13</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>14</sup>

#### IV. VALUATION

##### A. Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>15</sup>

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”<sup>16</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>17</sup> Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.<sup>18</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>19</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>20</sup>

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<sup>12</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>13</sup> Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

<sup>14</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

<sup>15</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>16</sup> *Id.*

<sup>17</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>18</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>19</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>20</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

## **B. Summary of the Evidence**

David Paladino, member of Chops Holdings, LLC, asserted that the condition rating of the Subject Property should be changed from fair to poor. This assertion was based upon comments written by a staff member of the Assessor following the Assessor's inspection of the Subject Property on January 18, 2011. In these comments, the Assessor noted that the windows were in poor condition and that some of the gutters were falling off.<sup>21</sup> Paladino further asserted that the land value was arbitrary because the mass appraisal model used to value the Subject Property did not appropriately take into account the proximity of the Subject Property to the interstate.

Larry Thomsen, supervisor for residential assessments and the head of the Assessor's section regarding residential appeals, testified regarding the assessment of the Subject Property. He testified that for both tax years the Assessor assigned an average quality rating to the Subject Property and a condition rating of fair.<sup>22</sup> Notes from the Assessor's inspection indicate that the Subject Property fronts to the interstate.<sup>23</sup> Thomsen testified that any negative impact on the actual value of the Subject Property for that characteristic is typically applied to the land value. After Thomsen's review of the Assessment Report, he determined that it was unlikely that an adjustment had been made to the Subject Property for its proximity to the interstate, but there was insufficient evidence available for him to make a determination of whether an adjustment should be made. Thomsen also referred to the Assessor's Comparable property #3, located near the Subject Property, which had the same land value of \$5,200.<sup>24</sup> The property record card for the Assessor's Comparable property #3 indicates that it sold September 20, 2010, for \$43,000.<sup>25</sup>

Thomsen asserted that while the condition of windows and gutters are taken into account in determining the overall condition of a subject property, all other characteristics are also reviewed and given weight, resulting in the possibility that some characteristics of a subject property may be in poor condition while the overall condition rating for the property should be rated at a higher condition.

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<sup>21</sup> See, E244:7.

<sup>22</sup> See, E243:5 and E244:5.

<sup>23</sup> See, E244:7.

<sup>24</sup> See, E244:28.

<sup>25</sup> See, E244:28.

Thomsen testified that for tax year 2012 the Assessor carried forward the taxable value of \$46,200 that was ordered by the Commission for tax year 2010, even though a mass appraisal sales comparison approach market calculation detail indicated an actual value of \$56,787.<sup>26</sup> Likewise, for tax year 2013, Thomsen testified that the Assessor carried forward the same taxable value that was ordered by the Commission of \$46,200 for tax year 2010, even though a mass appraisal sales comparison approach market calculation detail indicated an actual value of \$59,517.<sup>27</sup> Thomsen opined that based on the information in the Assessment Report the taxable value of \$46,200 was more appropriate than the mass appraisal model market calculation detail value for both tax years 2012 and 2013.

### C. Analysis

The Taxpayer must overcome by competent evidence a presumption in favor of the County Board.<sup>28</sup> Competent evidence is relevant and material evidence or that evidence “which the very nature of the thing to be proven requires.”<sup>29</sup> A taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued.<sup>30</sup> An owner who is familiar with his property and knows its worth is permitted to testify as to its value.<sup>31</sup> Separately, the Taxpayer must meet its burden to show that the County Board’s determination was arbitrary or unreasonable.<sup>32</sup> A mere difference of opinion is insufficient to meet the Taxpayer’s burden.<sup>33</sup>

David Paladino asserted that the Subject Property was overassessed because the County Board had not adequately taken into account significant deferred maintenance relating to the condition rating and had utilized an unreasonable land value because the Assessor’s model failed to take into account the proximity of the Subject Property to the interstate. The Taxpayer did not offer sufficient evidence to quantify the effects of these assertions on the actual value of the

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<sup>26</sup> See, E243:12.

<sup>27</sup> See, E244:13.

<sup>28</sup> See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).

<sup>29</sup> *Black’s Law Dictionary 6th Edition*, West Group, p. 284 (1990).

<sup>30</sup> See, *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

<sup>31</sup> See, *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

<sup>32</sup> See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013).

<sup>33</sup> See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 125-26, 825 N.W.2d 447, 452 (2013).

Subject Property, and no one presented a quantified alternative opinion of the actual value of the Subject Property. Paladino also asserted that the condition rating of the Subject Property should be changed from fair to poor. The notes from an Assessor's inspection indicate that there were some components of the improvement on the Subject Property in fair condition and some that were in poor condition.<sup>34</sup>

The Commission finds that Paladino's opinions relating to the condition of the Subject Property are competent evidence sufficient to rebut the presumption in favor of the County Board determination of value. However, the Commission finds that the Taxpayer did not produce clear and convincing evidence that Paladino's assertions established that the County Board's determinations of taxable value were arbitrary or unreasonable. The evidence is characterized as two conflicting subjective opinions, one of Paladino and the other of the County Assessor, concerning the condition rating of the Subject Property. The Taxpayer did not present objective evidence sufficient to support Paladino's opinion, and further did not quantify the impact of a change in condition rating on the taxable value of the Subject Property. The Commission finds that Paladino's assertions constitute a mere difference of opinion. The County Board's determinations of value should be affirmed.

## **V. CONCLUSION**

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. However, the Commission finds that there is not clear and convincing evidence that the County Board's determinations of value were arbitrary or unreasonable.

For all of the reasons set forth above, the determinations of taxable value by the County Board for tax years 2012 and 2013 should be affirmed.

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<sup>34</sup> See, E244:7.

## **VI. ORDER**

### **IT IS ORDERED THAT:**

1. The decisions of the Douglas County Board of Equalization determining the taxable values of the Subject Property for tax years 2012 and 2013 are affirmed.
2. The taxable value of the Subject Property for both tax years 2012 and 2013 is \$46,200.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax years 2012 and 2013.
7. This Decision and Order is effective for purposes of appeal on January 8, 2015.<sup>35</sup>

Signed and Sealed: January 8, 2015

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Robert W. Hotz, Commissioner

SEAL

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Nancy J. Salmon, Commissioner

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<sup>35</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.